IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Bail Appl..No. 5806 of 2007()

CRMP.1972/2007 of ADDL.DISTRICT COURT-I,MAVELIKKARA
CRIME NO.519/2007 OF KAYAMKULAM POLICE STATION

.....

: PETITIONER/IST ACCUSED

N.RAJENDRAN, S/O.V.NARAYANAN,
NARAYANAPURAM, MUTHUKULAM NORTH MURI,
MUTHUKULAM VILLAGE, ALAPPUZHA DISTRICT.

BY ADV. SMT.K.S.SAIRA

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5806 of 2007

Dated this the 26th day of September 2007

O R D E R

Application for anticipatory bail. The petitioner is the third accused. He, along with his brother-in-laws - altogether there are three accused, faces allegations for the offences punishable inter alia under Sections 308 and 324 I.P.C. The mother-in-law of the petitioner is the owner of a building. The de facto complainant is the tenant. There is bitter animosity and prolonged litigation between the landlord and the tenant in respect of the tenanted building. The de facto complainant had allegedly lodged a complaint about the attempt by the accused persons to demolish the tenanted building. Police had called the parties. Enraged by the conduct of the de facto complainant lodging such a complaint before the police, the three accused persons - two brothers and a brother-in-law (that is the petitioner) are alleged to have attacked the de facto complainant with dangerous weapon and caused injuries to him. The prosecution alleges that the offence committed by the petitioner include the offence punishable under Section 308 I.P.C. Investigation is in progress. Accused 1 and 2 have already been arrested and enlarged on bail. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are raised falsely and vexatiously against the accused persons. The petitioner was not present at all at the scene of the crime. False and vexatious allegations are raised by the tenant who is in the habit of raising such baseless allegations against the landlord/their relatives. At any rate, the allegation under Section 308 I.P.C has no legs to stand on. That allegation has been included only to ensure that the accused persons are kept in custody for as long a period as possible. In these circumstances, anticipatory bail may be granted in favour of the petitioner, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that in the facts and circumstances of this case, there is absolutely no justification in the prayer for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The learned Public Prosecutor submits that this is a fit case where the petitioner must resort to the ordinary course of appearing before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail like the co-accused.

4. The learned Public Prosecutor was requested to specifically explain how an allegation under Section 308 I.P.C is sustainable. The learned Public Prosecutor has taken me through the

allegations in the F.I.R. An iron stick (kampippara) is allegedly used for the commission of the offence. The nature of the injury suffered by the victim has also been read over to me. I shall scrupulously avoid any detailed discussion on the acceptability of the allegation and the credibility of the data collected. Suffice it to say that I am not persuaded to agree that there are sufficient reasons to justify the invocation of the extraordinary inherent discretion under Section 438 Cr.P.C. I agree with the learned Public Prosecutor that this is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007